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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1281

INVESTMENT ANNUITY, INC.,
Petitioner

v.

J. WILLIAM MILLER, SECRETARY OF THE TREASURY OF THE UNITED STATES, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	3
CONCLUSION	3
CASES:	
Investment Annuity, Inc. v. Blumenthal, 437 F.Supp. 1095 (1977)	2
Investment Annuity, Inc. v. Blumenthal, 442 F.Supp. 681 (1977)	2
Investment Annuity, Inc. v. Blumenthal, 609 F.2d 1 (1979)	2
United States v. Consumers Life Ins. Co., 430 U.S. 725 (1977)	3
CONSTITUTION OF THE UNITED STATES:	
Article III	2
Due Process Clause, Fifth Amendment	2
RULINGS:	
Rev. Rul. 77-85, 1977-1 C.B. 12	3
STATUTES:	
28 U.S.C. § 1254(1)	2
28 U.S.C. § 2201	2
Internal Revenue Code of 1954, as amended (26 U.S.C.)	
§ 801(g)	2
§ 7421	2

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Investment Annuity, Inc. ("IAI")[1] petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

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[1] IAI was the parent company of First Investment Annuity Company of America ("FIAC") when the acts of the IRS occurred which gave rise to the filing of this suit in the district court by IAI and FIAC. Prior to the appeal and as a consequence of failing to obtain all of the relief requested in the district court, IAI sold the stock of FIAC. This petition is filed on behalf of IAI.

OPINIONS BELOW

The opinion of the court of appeals [2] is reported at 609 F.2d 1 (1979). The memorandum opinions of the United States District Court for the District of Columbia, dated July 12, 1977 and November 9, 1977, are reported at 437 F.Supp. 1095 (1977) and 442 F.Supp. 681 (1977), respectively.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 1979. By order dated January 3, 1980, Chief Justice Burger extended the time for filing a petition for writ of certiorari to and including February 19, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Since both IAI's petition and FIAC's petition arise out of the same judgment of the court of appeals, the questions presented by IAI are the same as set forth in FIAC's petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the due process clause and Article III. The statutory provisions involved are sections 801(g) and 7421 of the Internal Revenue Code of 1954, and 28 U.S.C. § 2201.

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[2] IAI is aware of the petition for certiorari being filed on this date by FIAC. Both petitions arise out of the same judgment of the court of appeals. The opinion of the court of appeals, the memorandum opinions and orders of the district court, the judgment of the court of appeals, and the pertinent provisions of the constitution and statutes involved are all contained in the Appendices to FIAC's petition and are not reproduced here.

STATEMENT OF THE CASE

In addition to the facts set forth in FIAC's petition, IAI points out that it is a publicly held company with over a thousand shareholders. IAI raised funds from the public in reliance upon the rulings of the IRS that the tax consequences of investment annuity contracts for both the insurance company and the policyholders are the same as for other kinds of variable annuities. IAI contributed over $18 million to the capital of FIAC which enabled FIAC to develop and market the investment annuity. Thus, like FIAC, IAI is a party aggrieved by *Rev. Rul. 77-85,* 1977-1 C.B. 12, and has no access to judicial review other than this action.

REASONS FOR GRANTING THE WRIT

IAI hereby adopts, as its reasons for granting the writ, the reasons set forth in FIAC's petition.

In addition, IAI also desires to point out that, while denying petitioners the right to pursue their business, the intended result of *Rev. Rul. 77-85*,[3] the IRS continues to permit other forms of annuities to be sold. Many of these annuities have investment control features (the critical factor which was the basis for *Rev. Rul. 77-85*) which are indistinguishable from the investment control features of the investment annuity.

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[3] The district court, citing *United States* v. *Consumers Life Ins. Co.*, 430 U.S. 725, 750, n.34 (1977), found "that the Service was improperly motivated by considerations of tax reform when it issued Revenue Ruling 77-85," because that Ruling was an attempt to make "substantive changes in the tax laws" See Appendix B, p. 58a to FIAC's petition.

CONCLUSION

For the reasons stated above, and in FIAC's petition, the petition for certiorari should be granted.

Respectfully submitted,

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